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IN THE

Supreme Court of the United States

OCTOBER TERM, 1970

No. 1062

FIELDS PRODUCTIONS, INC.,

Petitioner,

—against—

UNITED ARTISTS CORPORATION,

Respondent.

RESPONDENT'S REBUTTAL BRIEF

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February 12, 1971

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Supreme Court of the United States

No. 1062

Fields Productions, Inc.,

Petitioner,

—against—

United Artists Corporation,

Respondent.

RESPONDENT'S REBUTTAL BRIEF

Preliminary Statement

Respondent has just been served with copies of "Petitioner's Supplemental Brief" and, in the event that that brief is considered by the Court, petitioner respectfully requests that the following rebuttal brief also be considered.

In view of the shortness of time, respondent is (at the suggestion of the Clerk of this Court) filing this brief in typewritten form.

The Footnote in *Mulvey v. Samuel Goldwyn Productions* and the Decision in *Wilson v. Ringsby Truck Lines*, to Which Petitioner Refers, Are Entirely Inapposite

In *Mulvey* v. *Samuel Goldwyn Productions* (Petitioner's Supp. Br., pp. 1-2), the Court of Appeals, Ninth Circuit, did not have before it—either on the appeal or the application for rehearing—a copy of the complaint in the instant

action or the particular facts herein, and it was not aware of the clear distinctions between *Mulvey* and the instant case, set forth in Respondent's Brief (pp. 13-14). The petition for rehearing there was predicated merely upon the fact that the court's opinion did not mention *Fields Productions, Inc.* v. *United Artists Corporation*. The fact remains—and the petitioner has been unable to controvert it—that the damage in the instant case was caused simply by an alleged breach of contract (for which an action is pending), whereas in *Mulvey* it was not (nor was any breach of contract claim even asserted).

This very distinction is recognized in the *Mulvey* opinion, which states that an antitrust action will not lie "when the breach consists of conduct other than that constituting the antitrust violation and when there is evidence that the non-antitrust wrong, not the antitrust violation, was the legal cause of the injury." (433 F.2d 1073, 1075). That is precisely the case here.

Consequently, the alleged conflict is not one of principle, but of the application of an established principle to different, and unique, sets of facts. Petitioner cannot contest respondent's demonstration that this asserted conflict "can affect few others than the litigants herein". (Resp. Br., p. 14). Moreover, the instant petition is uniquely unmeritorious, since the complaint here is insufficient for lack, not only of standing, but of causation.

The facts in *Wilson* v. *Ringsby Truck Lines, Inc.*, CCH 1971 Trade Cases, p. 89, 823, ¶ 72,441 (Petitioner's Supp. Br., pp. 2-3) have not the slightest resemblance hereto. Furthermore, the Court of Appeals in that Circuit, in *Nationwide Auto Appraiser Serv. Inc.* v. *Association of*

Casualty and Surety Companies, 382 F.2d 925, 929 (10th Cir. 1967), held that a franchisor, which receives percentage royalties from its franchise holders, may not—any more than a supplier or a licensor—recover damages resulting from antitrust violations directed against its franchise holders. (Please see also the quotation from that decision at page 20 of Respondent's Brief.)

Similarly, *Radovich* v. *National Football League*, 352 U.S. 445 (Petitioner's Supplemental Brief, page 3), upon which *Wilson* relied, is completely distinguished at page 12 of our principal brief.

CONCLUSION

The petitioner has failed to refute any of the respondent's reasons for denial of the writ.

Respectfully submitted,

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February 12, 1971